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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Investigation by the Department of Telecommunications)	
and Energy, on its own motion, commencing a Notice)	
of Inquiry and Rulemaking, pursuant to M.G.L. c. 164,)	
§§ 69H, 69I, 76C, and 220 C.M.R. §§ 2.00 <u>et seq.</u> , into)	Docket D.T.E. 98-84/EFSB 98-5
(1) rescinding 220 C.M.R. §§ 10.00 <u>et seq.</u> , and (2))	
exempting electric companies from any or all of the)	
provisions of G.L. c. 164, § 69I.)	
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**COMMENTS BY THE
NEES COMPANIES**

Introduction and Summary

New England Power Company, Massachusetts Electric Company, and Nantucket Electric Company (together the “NEES Companies”) file these comments in response to the Department’s notice of rulemaking in Docket D.T.E. 98-84 and the Siting Board’s notice in Docket EFSB 98-5. The NEES Companies support the review of resource planning regulations by the Department and Siting Board in light of the Restructuring Act and the introduction of choice for electricity suppliers. Specifically, the market pricing and supply of generation together with the completion of the divestiture of generating assets by the NEES Companies and other electric utilities in Massachusetts have fundamentally changed our approach to capacity and load planning and procurement. In addition, the inquiry necessary to justify the need for transmission improvements has also changed in a fundamental way with the advent of open access to transmission and the obligation to interconnect both load and generators to the transmission network. These changes require a re-evaluation and reformation of the old regulatory framework.

As explained below, the NEES Companies support the following proposals for the Department and the Siting Board:

1. The Department and the Siting Board should rescind the Integrated Resource Planning Regulations (220 C.M.R. §§ 10.00 et seq.) because, with the exception of default and standard service, electric utilities no longer procure electricity supplies for retail customers. The Department should also rescind its preapproved contract regulations (220 C.M.R. §§ 9.00 et seq.).
2. The Department and Siting Board should exempt electric companies from the requirements for filing a long range forecast and resource plan every two years under G.L. c. 164, § 69I. The forecast and resource plan are neither necessary nor appropriate for generation resources which are supplied through the market, and are of limited usefulness in the evaluation of transmission projects. Rather than require a formal forecast and plan filing, the Department and Siting Board should implement the flexible filing requirements for evaluating approvals for jurisdictional transmission facilities that are set forth below.
3. The Department and Siting Board should not expand proceedings under G.L. c. 164, § 69I to include demand side management or distribution related projects. The cost-effectiveness of DSM programs is now subject to the Department's and Division of Energy Resources jurisdiction under the Restructuring Act, Chapter 164 of the Acts and Resolves of 1997, §§ 37 (adding G.L. c. 25, § 19) and 50 (adding G.L. c. 25A, § 11G), and spending is controlled by statute. Further reviews of DSM programs are not necessary as part of an "alternative process" as proposed by the Department. Similarly, the Department should not adopt an alternative process that extends Department and Siting Board reviews to distribution facilities and distribution-related reliability issues when the underlying distribution facilities are not subject to the Siting Board's jurisdiction under the Massachusetts Siting Law encompassed in G.L. c. 164, § 69G et seq.
4. The "alternative process" adopted by the Department and Siting Board should focus on the siting for and approval of specific transmission facilities which are subject to the Siting Board's jurisdiction under the statute. As explained below, information requirements for these filings should be flexible and relate to the facts and circumstances of the jurisdictional transmission project. For example, the showing for a transmission interconnection for changes in generation sources is substantially different from the showing required for a transmission reinforcement or expansion to accommodate area load growth in which area load forecasts may be necessary. Filing requirements should be flexible to allow for these differences in the need for the project. Specifically, load forecast information should be required only if relevant to the need for the project, and should then be based on

the most current forecast information available at the time the transmission project is proposed.

5. The alternative process should also provide the context for the specific transmission improvements likely to be proposed. This context could be supplied annually in the same format as FERC Form 715, Annual Transmission Planning and Evaluation Report. The FERC Form 715 is prepared pursuant to FERC regulations, 18 C.F.R. § 141.300, and includes information under various power flow scenarios, transmission maps and line diagrams, the reliability criteria and planning guide for the system, transmission planning assessment practices, an evaluation of transmission system performance and constraints together with plans for transmission improvements. The March 31, 1998 FERC Form 715 for the NEES Companies is attached.^{1/} Similar FERC Form 715's are filed by all utilities in New England and for NEPOOL as a whole. In addition, the DOER will also be completing a comprehensive analysis of transmission issues under G.L. c. 25A, § 11A. The FERC Forms 715 filed by utilities and NEPOOL, together with the DOER analysis should provide a solid context for the review of the specific project proposals made to the Department and the Siting Board by individual utilities.

The following sections discuss these recommendations in more detail and respond to the questions of the Department and the Siting Board.

1. The Department and the Siting Board Should Rescind the Integrated Resource Planning and Preapproved Contract Regulations.

The Department's rationale for rescinding the IRP regulations is correct and compelling (D.T.E. 98-84, pp. 2-3). The Restructuring Act and the Department's own rulemakings and orders have fundamentally changed the methodology for procuring and implementing new electric generation supplies and resources. The old approach of procurement by vertically integrated utilities no longer exists. The regulations associated with that approach should be rescinded. The IRP regulations in 220 C.M.R. §§ 10.00 et seq. should be repealed.

^{1/}FERC Form 715 requires an initial baseline filing with annual updates. Thus, the initial filing would be comprehensive, followed by shorter annual supplements.

The same logic also applies to the Department's preapproved contract regulations set forth at 220 C.M.R. § 9.00 et seq. Those regulations establish the standard for cost recovery for new utility owned generation and incremental investments in utility owned generation facilities. These regulations have no application in the restructured industry. In most circumstances electric utilities will not be undertaking new generation investments at all, and in those circumstances when new investments are made by utilities they will be made at the utility's own risk subject to market prices.^{2/} The regulations set forth in 220 C.M.R. 9.00 et seq. should not apply to any new investment by any utility or other power supplier. These regulations should also be rescinded by the Department.

2. The Department and Siting Board Should Exempt Utilities from the Bi-Annual Forecast Filing Required Under G.L. 164, § 69I.

Under G.L. c. 164, § 69I, utilities are required to file with the Department "a long-range forecast with respect to the electric power needs and requirements of its market area . . . for the ensuing ten year period." The statute requires the filings to be made every two years. The statute also provides the Department with the authority "to exempt any electric or gas company from any or all provisions of this section upon a determination by the department and siting board, after notice and hearing, that an alternative process is in the public interest."

In its notice (pp. 3-4), the Department seeks comments on the merits of granting an exemption from the forecast filing requirement of § 69I and the contents of the alternative process

^{2/}The only exceptions relate to incremental investments in nuclear entitlements covered under Department approved settlements or orders. These incremental investments are not subject to 220 C.M.R. § 9.00 et seq.

that should be implemented pursuant to the statute. As discussed below, the alternative process should be directed to approving proposals by electric companies for “facilities” that remain jurisdictional to the Siting Board under the statute. For the NEES Companies, which will own and construct distribution and transmission facilities but not generation, jurisdictional “facilities” include only “a new electric transmission line having a design rating of 69 kilowatts or more and which is one mile or more in length on a new transmission corridor, . . . a new electric transmission line having a design rating of 115 kilovolts or more which is 10 miles or more in length on an existing transmission corridor except reconductoring or rebuilding of transmission lines at the same voltage, [or] an ancillary structure which is an integral part of the operation of any transmission line which is a facility.” G.L. c. 164, § 69G. Thus, the filings required under the statute should match the jurisdictional approvals now required after the completion of divestiture and electric utility restructuring. For the NEES Companies, NEP is the company that will generally own or construct jurisdictional transmission facilities, and will therefore be making filings with the Siting Board. This approach is consistent with the Restructuring Act, G.L. c. 164, § 1A(b)(1), that prohibits distribution companies, like Mass. Electric, from owning transmission facilities and generating facilities. Thus, only NEP’s transmission facilities remain jurisdictional under the Siting Statute.

As the Department recognizes in its notice, the filing and approval of a long range forecast of electric power needs and requirements is no longer necessary to discharge its obligations to approve transmission facilities under the Siting Statute. Accordingly, the Department’s proposal to exempt distribution and transmission companies from the filing requirements in Section 69I and adopt an alternative process for jurisdictional transmission projects is sound, administratively

efficient, and in the public interest. The exemption should be adopted in the final order in this case.

The Department also recognizes that it has a continuing public interest responsibility to monitor the reliability and diversity of electric power supplies through information available from ISO/New England. This information has also been compiled in the NEPOOL Capacity, Energy, Load and Transmission (CELT) Report that is prepared each year. As the markets develop and the power exchange is implemented, further market information will be available to the Department and the Siting Board. Finally, under Section 50 of the Restructuring Act (adding G.L. c. 25A § 11E), the DOER has significant new responsibilities to gather and report on information on the ISO and Power Exchange, including their “achievement of energy efficiency and fuel diversity goals.” In addition, the DOER is required to analyze the “operation of retail markets and any deficiencies in the operation of those markets,” and to make “periodic projections of supply, demand, and price of energy on statewide and regional basis.” The DOER is also required to issue an annual report “containing information on all issues of electricity system reliability, including, but not limited to, generation and transmission data detailing load and capacity, for the prior calendar year and forecasting potential future capacity excesses or deficits for the next five calendar years.” The CELT report from NEPOOL and the analysis by the DOER should provide the quality information on fuel diversity, reliability, supply adequacy, and efficient market operations necessary for the Department and Siting Board to discharge their public interest responsibilities under G.L. c. 164, § 69I.

3. An Alternative Process is Presently in Place for DSM and Distribution Reliability Programs That Are Not Jurisdictional Under the Siting Statute.

As explained above, the implementation of DSM and distribution reliability improvements do not require approval of the Siting Board under the Siting Act because they are not “facilities” as defined under G.L. c. 164, § 69H. Moreover, as the Department recognized in its notice, alternative processes are already in place to address these issues. In the case of DSM, funding and cost-effectiveness requirements are strictly defined and administered by the DOER. In addition, the settlements in place today specify standards for distribution reliability. Similar distribution-related, performance based standards are also contemplated under the Restructuring Act. G.L. c. 164, § 1E. In view of these alternative processes already in place, there is no need to require information on these issues under G.L. c. 164, § 69I. The Department has correctly concluded that these issues “can be addressed outside the long-range forecast framework established in § 69I.”

4. The Alternative Process Should Focus on Jurisdictional Transmission Facilities.

The Siting Board’s approval is required for the construction of significant transmission projects on the system. However, unlike the traditional “need” showing for new generating capacity, the “need” for new transmission improvements can be driven by changes in either generation or load often occurring in local areas, rather than on the system as a whole. For example, many transmission projects are driven by the need to interconnect new generation to the grid or to reinforce the grid when a generating unit is retired. The need showing is based on a local and defined event on the system. Load in the region or on the system is of limited relevance. Similarly, specific transmission improvements may be required to interconnect a major new customer at a new location, or for more generalized load growth within a local area. Finally,

general load growth or changes in generation sources can give rise to a need for improvements in the transmission network to relieve constraints or eliminate transmission congestion.

The key point is that the facts and circumstances giving rise to a transmission project will vary substantially from case to case. The Department and Siting Board should allow utilities to develop the need showings based on the facts and circumstances giving rise to the specific project. The Department and Siting Board should avoid generic requirements that may be expensive to present but are of little relevance to the justification for the project. For example, the load forecast information now generically required in Administrative Bulletin 78-2 should not be required to justify a transmission improvement that is proposed to connect a new generator to the system. Moreover, even when load growth is a driving factor for the transmission improvement, the load growth may be in the local area only and not require a system-wide forecast. If, for example, the proposal involves network improvement to the transmission system caused by growth in a local area, the utility should support the project using information directly relevant to the local area, recognizing that the local area forecast must be consistent with the system-wide growth projections.

To accommodate these different showings that will be required for different projects, the Department and Siting Board should adopt flexible filing requirements and avoid specifying information that is not necessary to support the need for the project. Specifically, the bi-annual forecast filing under § 69I should be not required at all, and utilities should file forecast information with transmission proposals when the load forecast is relevant to the justification of the project. If the load forecast is relevant, the utility should support the project with the most

current forecast available at the time the analysis was completed. The information requirements in Administrative Bulletin 78-2 should be revised to allow that additional flexibility.

5. The “Alternative Process” Should Use the Annual FERC Form 715 to Provide the System-Wide Context for Individual Transmission Project Proposals.

As the Department recognized in its notice, utilities should file a system-wide plan to provide the context for specific projects and identify “emerging transmission constraints” (Order, p. 4). FERC has already developed such a report that all utilities and NEPOOL now prepare and file annually. The report on FERC Form 715 was adopted in Order No. 558 in Docket No. RM93-10-000 on September 30, 1993. III FERC Stats and Regs. ¶30,980.^{3/} As explained by FERC in its summary, the report is designed to inform the public of “potentially available transmission capacity and known constraints, as required under § 213(b) of the Federal Power Act.” The report provides a comprehensive survey and plan for the transmission system, which is updated annually. This report, together with the analysis done by the DOER under the Restructuring Act (G.L. c. 25A, § 11E), that was summarized above, should be included in the alternative process developed by the Department as a substitute for the long range forecast otherwise required under § 69I. This information should provide the Department and Siting Board with a solid regional context for specific transmission improvements that may be proposed by utilities.

6. Responses to Specific Questions.

^{3/}See also Order No. 558-A (Dec. 9, 1993) and Order No. 558-B (March 24, 1994).

In its Order and Notice, the Department and the Siting Board requested a response to specific questions. This section of our comments provides those responses.

Question 1: Will information generally available from ISO/New England be sufficient to allow the Department to report to the General Court, pursuant to G.L. c. 164, § 69I, on “the reliability and diversity of electric power”? If not, what other information will the Department need to collect, and how should it be collected?

Response: As explained in Section 2 above, NEPOOL through the CELT report and the DOER under G.L. c. 25A, § 11E will both be completing comprehensive analysis of generation resources and plans. These sources of information should be sufficient to allow the Department to report to the General Court under G.L. c. 164, § 69I. Under G.L. c. 25A, § 11E, the DOER is also required to submit its findings to the General Court. The alternative process should provide an opportunity for comment and coordinated recommendations by the Department, Siting Board, and DOER.

Question 2: What changes need to be made to Administrative Bulletin 78-2 in order to: (1) focus it on developing transmission needs, rather than supply needs; and (2) ensure that the Department is aware of emerging inter-utility and inter-state transmission needs?

Response: As explained under Section 4 above, Administrative Bulletin 2 should not require load forecast information in every project filing, but should allow utilities to structure their filing to fit the facts and circumstances that gave rise to the need for the project proposal.

Question 3: Under what circumstances should forecast information be supplied as part of a proposal to construct a transmission facility pursuant to G.L. c. § 69J?

Is a forecast necessary only when the need for a proposed facility depends primarily on projected load growth?

Response: A forecast should be necessary only when the need for a proposed facility depends primarily on projected load growth. In that event, the application for approval should include the relevant and current forecast information.

Question 4: What should be the geographical extent of any forecast filed as part of a transmission facility proposal?

Response: The forecast should match the geographic area that is giving rise to the transmission improvement. The utility should be prepared to show that a local area forecast is consistent with the load forecast in use for the system if that should become an issue in the proceeding.

Question 5: What information should be filed in such a forecast? To what level of detail would the Siting Board need to review the forecast in order to ensure that it is accurate enough to serve as proof of the need for the proposed facility?

Response: The local area forecast should be sufficiently detailed for the utility to demonstrate to the Department and Siting Board that it is reasonable. The Siting Board should review the forecast in light of the facts and circumstances associated with the Transmission improvement that is proposed. It should not litigate the system-wide, long-term load forecast, if the transmission improvement is not driven by system-wide load growth, or if system-wide load growth has a relatively minor effect on the schedule for the project. The determination to examine the system-wide load forecast should be made in light of the facts and circumstances associated

with a specific project. It should not be required to be presented in every filing.

Conclusion.

For the reasons stated, the Department and Siting Board should: (1) rescind the preapproved contract and IRP regulations 220 C.M.R. §§ 9.00 et seq. and 10.00 et seq.; (2) exempt transmission and distribution companies from the requirements of G.L. c. 164, § 69I; and (3) implement an alternative process with flexible filing requirements in accordance with the recommendations set forth in these comments.

Respectfully submitted,
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